

APPENDIX

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**IN THE CIRCUIT COURT OF JACKSON COUNTY MISSOURI
AT INDEPENDENCE**

SHANNON J. EDWARDS,)	
)	
MOVANT,)	
)	Case No. 1616-CV20463
vs.)	
)	Division 17
STATE OF MISSOURI,)	
)	
RESPONDENT,)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Comes now the Court on the Movant's Amended Motion to Vacate, Set Aside or Correct the Judgment and Sentence pursuant to Missouri Supreme Court Rule 24.035. Having considered the Movant's Amended Motion to Vacate, Set Aside or Correct the Sentence, and having heard and considered the evidence presented at the August hearing, and having examined the underlying criminal files in *State v. Shannon Edwards*, 1516CR02873-01 and 1616CR1315-01 the Court finds and concludes that the Movant's Amended Motion to Vacate, Set Aside or Correct Judgment and Sentence pursuant to Missouri Supreme Court Rule 24.035 should be and is hereby denied, and further makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In the case of *State v. Shannon Edwards* 1516-CR02873-01, Movant was originally charged with one count of Statutory Sodomy in the First Degree. In case numbered 1616-CR01315-01 the Movant was charged with one count of Abuse or Neglect of a Child, a class C Felony. On June 24, 2016, Movant pled guilty to the reduced charge of Child

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Molestation in the First Degree, a class B Felony, and to one count of Abuse or Neglect of a Child. Pursuant to a plea agreement the Defendant was sentenced to concurrent sentences of ten years in prison for child molestation and seven years in prison for child abuse.

2. On April 27, 2017 Movant filed an Amended Motion to Vacate, Set Aside, or Correct Judgment and Sentence with this Court.
3. Movant is currently incarcerated at Women's Eastern Reception and Diagnostic Correctional Center, 1101 East Highway 54, Vandalia, MO 63382.

CONCLUSIONS OF LAW

1. In order to prevail on a claim of ineffective assistance of counsel, it must be shown that counsel failed to exercise the customary skill and diligence of a reasonably competent attorney under similar circumstances and that Movant's defense was prejudiced by counsel's action or inaction. *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984); *Wilson v. State*, 626 S.W.2d 243, 245 (Mo. banc 1982); *Seales v. State*, 580 S.W.2d 733, 736 (Mo. banc 1979).
2. In addition, the burden is upon the Movant to show ineffective assistance of counsel. *Murphy v. State*, 636 S.W.2d 699, 702 (Mo. App. S.D. 1982). Movant "must satisfy *both* the performance prong *and* the prejudice prong to prevail on an ineffective assistance of counsel claim." *Sanders v. State*, 738 S.W.2d 856, 857 (Mo. banc 1987) (emphasis added). The court, however, is not required to consider both prongs; if Movant fails to satisfy the first prong, the court is not required to consider the second. *See id.*; *see also Strickland*, 466 U.S. at 697. Likewise, the court is not required to consider the issue of performance before the issue of prejudice. *Id.* The court maintains the discretion to

address the issue of prejudice without first determining whether counsel's conduct was deficient. *Id.*

3. Prejudice is not presumed from a showing of deficient performance by trial counsel, but rather, must be affirmatively proven. *See Strickland*, 466 U.S. at 693; *see also Sidebottom v. State*, 781 S.W.2d 791 (Mo. banc 1989). To affirmatively establish prejudice, the movant carries a "heavy burden" of proving his allegation by a preponderance of the evidence. *See Strickland*, 466 U.S. at 689, *see also State v. Young*, 844 S.W.2d 541 (Mo. App. E.D. 1992). Incidentally, this heavy burden becomes "heavier" in light of the presumption that trial counsel is competent. *See Strickland*, 466 U.S. at 689; *see also State v. Lopez*, 836 S.W.2d 28, 35 (Mo. App. E.D. 1992).
4. "In order to 'satisfy the 'prejudice' requirement, a prisoner who has pled guilty must demonstrate there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial.'" *Peet v. State*, 22 S.W.3d 792, 794 (Mo. App. S.D. 2000); *Jenkins v. State*, 9 S.W.3d 705, 707 (Mo. App. S.D. 1999). Reasonable probability is defined as ". . . [p]robability sufficient to undermine . . . confidence in the outcome [of the proceeding]. *State v. White*, 798 S.W.2d 694, 697 (Mo. 1990). In order to determine if a reasonable probability exists, the Motion Court must consider the totality of the evidence. *See Strickland*, 466 U.S. at 691-96; *see also Jones v. State*, 773 S.W.2d 156 (Mo. App. E.D. 1989).
5. "[W]hen attacking the competency of counsel following a guilty plea, . . . a movant must show that counsel's errors were so serious that his representation fell below an objective standard of reasonableness, and that these errors affected the outcome of the plea process." *Eichelberger v. State*, 71 S.W.3d 197, 200 (Mo. App. W.D. 2002) (citing

Sutton v. State, 966 S.W.2d 337, 340 (Mo. App. S.D. 1998); *Edwards v. State*, 794 S.W.2d 249, 250 (Mo. App. W.D. 1990)). The Court in *Eichelberger* also noted that “after appellant’s guilty plea, the effectiveness of his trial counsel is immaterial except that he would have received a lesser sentence had it not been for his trial counsel’s alleged trial error.” *Eichelberger*, 71 S.W.3d 197 at 200 (citing *Adams v. State*, 951 S.W.2d 722, 724 (Mo. App. W.D. 1997)).

6. “An attorney’s mere prediction of a sentence or of punishment the court will impose does not necessarily constitute coercion which renders a guilty plea involuntary.” *Simons v. State*, 719 S.W.2d 479, 481 (Mo. App. S.D. 1986) “For counsel to predict the possibility of a lengthy sentence following a jury trial does not amount to a coerced and involuntary plea.” *Robertson v. State*, 502 S.W.3d 32, 36 (Mo. App. W. Dist. 2016). “The mere fact that an attorney may advise his client to enter a guilty plea rather than expose himself to a more generous penalty after trial does not make the plea the product of duress.” *Troupe v. State*, 590 S.W.2d 390, 391 (Mo. App. E. Dist. 1979).
7. By pleading guilty, the movant “waives all errors except those that affect the voluntariness or understanding with which the plea was made.” *White v. State*, 957 S.W.2d 805, 807 (Mo. App. W.D. 1997); *see also Mayberry v. State*, 137 S.W.3d 543, 547 (Mo. App. S.D. 2004).
8. A guilty plea generally waives any complaint about a trial counsel’s failure to investigate. *Holland v. State*, 990 S.W.2d 24, 31 (Mo. App. E.D. 1999).

JUDGMENT

Movant’s Amended Motion contains a single claim, that her plea was not entered knowingly, intelligently and voluntarily, because it was induced by her counsel, Deidre

Wood, by instilling fear in Movant that if she went to trial, she would likely be convicted, and if convicted, would be sentenced to fifteen to twenty-five years in prison. Movant claims she would not have pleaded guilty and insisted on going to trial, if counsel had not told her that she would be sentenced to a much longer term in prison if she were convicted after a trial. Movant claims that Ms. Woods provided ineffective assistance of counsel because she induced Movant to plead guilty based on the fear of going to trial and on the fear of receiving a sentence of fifteen to twenty-five years in prison.

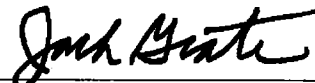
Movant claims that the guilty plea was the result of coercion by her counsel and therefore her plea was not voluntary. At the time of the plea the Movant indicated that she understood the plea agreement and that no threats or promises had been made to her. Movant at no time has indicated that she was threatened or coerced by some actual harm to herself or others. Ms. Woods prediction of a possible harsher sentence does not constitute coercion which renders the plea involuntary. *White v. State*, 954 S.W. 3rd 703 (W.D. 1997). The Ms. Woods offered an experienced prediction that was good advice and good plea bargaining. Movant had ample time and opportunity to indicate any real coercion at the time of plea and she did not. The Court finds Movant's testimony on June 24, 2016 contradicts her own pleadings and testimony at the September 11, 2017 hearing claiming coercion. Simply having to make a difficult choice between pleading guilty to concurrent ten and seven year sentence or going to trial with a possibility of fifteen to twenty-five years does not constitute coercion. The Court further finds that Movant's remaining pro se claims are also without merit. The Court finds that Movant's guilty plea was freely and voluntarily made.

The Court also finds that the Movant's rights to effective assistance of counsel and to due process of law, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and by Article I, Sections 10 and 18(a) of the Missouri Constitution, were not violated by any alleged conduct of defense counsel. The Court finds that Ms. Woods testimony regarding her representation of Movant was credible. This Court finds that the Movant was not prejudiced or coerced by defense counsel and therefore is not entitled to relief.

WHEREFORE, based upon the above-stated facts and conclusions of law, the Court finds that the Movant's Amended Motion to Vacate, Set Aside or Correct Judgment and Sentence should be and is hereby DENIED.

9/22/17

DATE



Jack Grate, JUDGE

Certificate of Mailing

I hereby certify that copies of the foregoing were e-filed this 22 day of September, 2017 to:

Christine Willis
Assistant Prosecuting Attorney

Susan Hogan
Attorney for Movant



Judicial Administrative Assistant